RECORD AND BRIEFS

SEP

No. 16-498

IN THE

Supreme Court of the United States

DAVID PATCHAK, PETITIONER,

v.

RYAN ZINKE, SECRETARY OF THE INTERIOR, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE U.S. HOUSE OF REPRESENTATIVES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

The U.S. House of Representatives[2] has a compelling institutional interest in preserving the full scope of its broad legislative authority under the Constitution. This case concerns the constitutionality of the Gun Lake Trust Land Reaffirmation Act, Pub. L. No. 113-179, 128 Stat. 1913 (2014) ("Gun Lake Act"). The Gun Lake Act ratified and confirmed the decision of the Secretary of the Interior to take certain land (the "Bradley property") into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, and it removed federal subject-matter jurisdiction over any actions relating to the property.

The court of appeals correctly held that the Gun Lake Act was a permissible exercise of Congress's authority to "withdraw subject matter jurisdiction" over a class of cases and "to direct district courts to apply" the "newly enacted legislation in pending civil cases." J.A. 34-35. Petitioner's contrary argument – that the Act's purportedly "unusual" direction that courts "shall promptly dismiss" any lawsuit relating to the Bradley property encroaches upon the judicial authority, Pet. Br. 18 – cannot be reconciled with the precedents of this Court. Nor can

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[1] Pursuant to this Court's Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties have consented in writing to the filing of this brief.

[2] The Bipartisan Legal Advisory Group ("BLAG"), which consists of the Speaker, the Majority Leader, the Majority Whip, the Democratic Leader, and the Democratic Whip, voted unanimously to authorize the filing of this brief on behalf of the House. The BLAG "speaks for, and articulates the institutional position of, the House in all litigation matters." Rule II.8(b) of the U.S. House of Representatives (115th Cong.).

it be reconciled with the broad sweep of Congress's legislative power, as evidenced by more than a century of legislative practice during which Congress has enacted countless provisions directing courts to dismiss lawsuits under a wide variety of circumstances. If accepted, petitioner's position would upset the separation of powers enshrined in the Constitution, by eviscerating Congress's long-established authority to enact legislation defining and limiting the subject-matter jurisdiction of the federal courts.

SUMMARY OF ARGUMENT

This case presents the question whether the legislative power conferred on Congress by the Constitution is sufficient to sustain legislation directing the courts to "promptly dismiss" any lawsuit relating to the Bradley property. It plainly is.

I. The Gun Lake Act falls squarely within the broad scope of Congress's legislative authority. The Act has two operative provisions: Section 2(a) ratifies and confirms the Secretary of the Interior's decision to take the Bradley property into trust, and section 2(b) provides that no action concerning the property shall be filed or maintained in federal court and that any such action, including any pending action, shall be promptly dismissed.

Section 2(a) is an exercise of Congress's plenary power over matters pertaining to Indian tribes, which Congress has frequently employed to take land into trust for the benefit of such tribes. Here, Congress enacted section 2(a) to eliminate any alleged legal deficiencies in the Secretary's decision to take the Bradley property into trust. This Court's precedents have long established that Congress is empowered to ratify actions of the Executive

Branch that it might have authorized, and that such ratification is equivalent to an original grant of authority.

Section 2(b) streamlines the implementation of Congress's definitive decision in section 2(a) to take the Bradley property into trust, by withdrawing subject-matter jurisdiction over lawsuits relating to the Bradley property. It is similarly well within Congress's broad legislative authority. This Court has repeatedly confirmed that Congress is empowered to define the jurisdiction of the lower federal courts, and that such legislation may be made applicable to pending cases. While the Gun Lake Act withdraws jurisdiction over a relatively narrow class of cases – only those cases relating to the Bradley property – the Court has consistently held that Congress may enact legislation that is as particularized as it sees fit.

II. The Gun Lake Act does not intrude impermissibly upon the judicial power. In *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), this Court observed that Congress may not "prescribe rules of decision to the Judicial Department of the government in cases pending before it." *Id.* at 147. Subsequent to *Klein*, however, the Court has made clear that "[o]ne cannot take this language from *Klein* 'at face value,'" because "'congressional power to make valid statutes retroactively applicable to pending cases has often been recognized.'" *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1324 (2016) (citation omitted). In particular, legislation that affects outcomes in pending cases does not run afoul of *Klein* as long as it "compel[s] changes in law, not findings or results under old law." *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 438 (1992). Here, the Gun Lake Act unquestionably changed the law, both by eliminating preexisting grounds for legal challenges to the trust sta-

tus of the Bradley property and by removing subject-matter jurisdiction over any case relating to the property. *Klein* therefore has no application here.

Petitioner nevertheless contends that the Gun Lake Act's direction that courts "shall promptly dismiss" any lawsuit relating to the Bradley property constitutes an impermissible intrusion upon the judicial power. Petitioner is mistaken. Section 2(b)'s requirement that courts "shall promptly dismiss" any lawsuit that meets the statutory criteria is necessarily inherent in the statute's removal of federal-court jurisdiction over actions relating to the Bradley property – a jurisdictional modification that Congress was plainly empowered to enact. Similar language has been used in countless other federal statutes for over a century. There is no credible basis for questioning Congress's authority to direct the federal courts to dismiss cases over which they lack subject-matter jurisdiction. Indeed, prompt dismissal of such cases would be required even in the absence of an express congressional direction. The decision of the court of appeals should be affirmed.

ARGUMENT

I. THE GUN LAKE ACT IS WELL WITHIN CONGRESS'S LEGISLATIVE AUTHORITY

The Constitution provides that "[a]ll legislative Powers herein granted shall be vested" in Congress. U.S. Const. art 1, § 1. Congress validly enacted the Gun Lake Act pursuant to its broad legislative authority.

A. Congress Has Plenary Power To Take Lands Into Trust For Indian Tribes And To Ratify Agency Decisions To That Effect

Section 2(a) of the Gun Lake Act provides that "[t]he land taken into trust by the United States for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians * * * is reaffirmed as trust land, and the actions of the Secretary of the Interior in taking that land into trust are ratified and confirmed." Pub. L. No. 113-179, 128 Stat. 1913, § 2(a). Petitioner claims that "[t]he meaning and effect of this language is hardly self-evident," Pet. Br. 19, but the provision could not be more clear.

By its plain terms, section 2(a) "ratified and confirmed" the decision of the Secretary to take the Bradley Property into trust. Pub. L. No. 113-179, 128 Stat. 1913, § 2(a); *see* H. Rep. No. 113-590 (2014) (S. 1603 "reaffirm[s] that certain land has been taken into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatami Indians"); 160 Cong. Rec. H7485-01 (daily ed. Sept. 15, 2014) (statement of Rep. D. Hastings) ("S. 1603 ratifies a decision of the Secretary of the Interior to acquire land and place it in trust for the Gun Lake Tribe of Michigan."); *id.* (statement of Rep. Grijalva) ("S. 1603 * * * simply affirms that the land taken into trust for the Gun Lake Tribe in Michigan is Indian land and is rightfully held in trust by the United States for the tribe's benefit."); *id.* (statement of Rep. Upton) ("This bill is really quite simple. It merely reaffirms the U.S. Secretary of Interior's action of taking this land into trust for the Gun Lake Tribe."); Hearing on S. 1603, S. 1818, S. 2040, S. 2041, and S. 2188, Before the S. Comm. on Indian Affairs, 113 Cong. 2 (2014) (statement of Sen. Tester) ("S. 1603 would ratify and confirm the Secretary's taking of land into trust for the Gun Lake Band.").

The unambiguous effect of this statutory language is to eliminate any legal grounds that might previously have existed for challenging the Secretary's decision to take the Bradley property into trust. Thus, section 2(a) effectively mooted the claims of individuals, like petitioner, who contend that the Secretary's decision was not authorized by preexisting law.

Section 2(a) is unquestionably a valid exercise of Congress's legislative power. As this Court has long recognized, "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.'" *United States v. Lara*, 541 U.S. 193, 200 (2004) (citations omitted). Indeed, the "central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs." *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989) (citations omitted). Congress has frequently exercised that far-reaching legislative authority by taking land into trust for Indian tribes, just as it did here. *See, e.g.*, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 15.04(3)(b) (2012); *id.* § 15.07(1)(b), at 1042 & n.22.[3]

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[3] *See, e.g.*, Pub. L. No. 106-568, §411(b), 114 Stat. 2868 (2000) ("[T]he Secretary shall take into trust for the benefit of the Sioux Nation the parcel of land in Stanley County, South Dakota, that is described as the 'Reconcilliation Place Addition.'"); Pub. L. No. 98-602, § 105(b)(1), 98 Stat. 3149 (1984) ("[S]uch funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of [the Wyandotte] Tribe [of Oklahoma]."); Pub. L. No. 95-498, 92 Stat. 1672 (1978) ("[A]ll right, title, and interest of the United States in the following lands situated * * * within the state of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana."); Pub. L. No. 95-337, 92 Stat. 455 (1978) ("[T]wo thousand seven hundred acres, more

In addition, Congress was plainly authorized to ratify the Secretary's decision. It is "well settled that Congress" has the power to "'ratify * * * acts which it might have authorized.'" *Swayne & Hoyt, Ltd. v. United States*, 300 U.S. 297, 301 (1973) (quoting *Mattingly v. District of Columbia*, 97 U.S. 687, 690 (1878))). Indeed, the Court has explained that this "power of ratification" is "so elementary as to need but statement." *United States v. Heinszen*, 206 U.S. 370, 382 (1907). Such ratification, moreover, is "conclusive upon the courts." *Wilson v. Shaw*, 204 U.S. 24, 32 (1907).

Petitioner argues that section 2(a) did not "chang[e] the legal status of the property." Pet. Br. 19. But when, as here, Congress ratifies an action of the Executive Branch, that ratification is "equivalent to an original authority." *Mattingly*, 97 U.S. at 690; *Wilson*, 204 U.S. at 32. By ratifying an action, Congress "may therefore cure irregularities, and confirm proceedings, which without the confirmation would be void." *Mattingly*, 97 U.S. at 690. In other words, ratification "give[s] the force of law to official action" that may have been "unauthorized when taken." *Swayne & Hoyt*, 300 U.S. at 302. Accordingly, particularly in light of petitioner's contention that the Secretary's initial decision concerning the Bradley property was contrary to law, section 2(a) *does* change the legal status of the property: it removes any legal doubt about the validity of that decision, by giving it the "force of law," *Swayne & Hoyt*, 300 U.S. at 302 (citations omitted), and "cure[ing]" any alleged "irregularities"

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or less, are hereby held in trust for the Paiute and Shoshone Tribes[.]"); Pub. L. No. 75-397, 50 Stat. 868 (1937) ("[T]he title to said lands shall be and remain in the United States in trust for the Indians of the Blackfeet Tribe[.]").

such as those asserted by petitioner, *Mattingly*, 97 U.S. at 690.

B. The Constitution Empowered Congress To Withdraw Jurisdiction Over Actions Relating To The Bradley Property And Make That Withdrawal Applicable To Pending Cases

Section 2(b) of the Gun Lake Act provides that "an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to [the Bradley property] shall not be filed or maintained in a Federal court and shall be promptly dismissed." Pub. L. No. 113-179, 128 Stat. 1913, § 2(b). This provision withdraws subject-matter jurisdiction over lawsuits relating to the Bradley property, thereby prohibiting "any action relating to the [property] from being brought or maintained in federal court." H. Rep. No. 113-590 (2014). As with section 2(a), this provision falls squarely within the scope of Congress's legislative authority.[4]

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[4] Because section 2(b) is plainly constitutional as a jurisdiction-defining provision, the Court need not address the alternative argument that section 2(b) is also constitutional on the grounds of sovereign immunity. *See* Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' Resp. Br. 15-24; Federal Respondents' Br. 23-27; *see also* J.A. 43 ("[B]ecause we conclude that the Gun Lake Act is not constitutionally infirm, and that subject matter jurisdiction over Mr. Patchak's claim has thus validly been withdrawn, we need not consider" the argument that "the Gun Lake Act provides an exemption to the APA's waiver of sovereign immunity."). If the Court chooses to address that issue, however, the House agrees that Congress's plenary power to waive, preserve, or reinstate the sovereign immunity of the United States provides an independent and equally compelling alternative ground for sustaining the constitutionality of the Gun Lake Act.

As an initial matter, "[t]here can be no question of the power of Congress * * * to define and limit the jurisdiction of the inferior courts of the United States." *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) (citing *Kline v. Burke Constr. Co.*, 260 U.S. 226, 233 (1922)). That is so because "[a]ll federal courts, other than the Supreme Court, derive their jurisdiction wholly from the exercise of the authority to 'ordain and establish' inferior courts, conferred on Congress by Article III, § 1, of the Constitution," and the "power to ordain and establish inferior courts includes the power of investing them with jurisdiction." *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943) (citation and quotation marks omitted). Both "[t]he decision [whether to create] inferior federal courts, as well as the task of defining their jurisdiction, was left to the discretion of Congress." *Palmore v. United States*, 411 U.S. 389, 400-01 (1973).[5]

It is also well established that, "having a right to prescribe [jurisdiction], Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies." *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850). Accordingly, any "jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part." *Kline*, 260 U.S. at 234. Indeed, the "position has held constant since at least 1845" that with respect to the lower federal courts, "'the judicial power of the United States * * * is * * * dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the

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[5] *See also Kline*, 260 U.S. at 234 ("Every other court created by the general government derives its jurisdiction wholly from the authority of Congress."); *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448-49 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions.").

sole power of creating th[os]e tribunals * * * and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'" *Ankenbrandt v. Richards*, 504 U.S. 689, 698 (1992) (quoting *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845)).

As confirmed by more than two centuries of this Court's precedents, it is equally incontrovertible that "Congress * * * may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1317 (2016); *see, e.g.*, *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 429-30 (1855); *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801). As Chief Justice Marshall cogently observed, "if subsequent to the judgement and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional * * * I know of no court which can contest its obligation." *Schooner Peggy*, 5 U.S. at 110. Indeed, the Court has even upheld statutes that specified – by name and docket number – the pending cases to which the change in law should apply. *See, e.g.*, *Bank Markazi*, 136 S. Ct. at 1317; *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 440 (1992).[8]

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[8] *See Bank Markazi*, 136 S. Ct. at 1319 ("Section 8772(b) defines as available for execution by holders of terrorism judgments against Iran 'the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in *Peterson et al. v. Islamic Republic of Iran et al.*,

Accordingly, the Court has "regularly applied intervening statutes conferring or ousting jurisdiction" in pending cases. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994). "[J]urisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cognizable when commenced must fall." *Kline*, 260 U.S. at 234; *accord Bruner v. United States*, 343 U.S. 112, 116-17 (1994) ("[W]hen a law conferring jurisdiction is repealed without reservation as to pending cases, all cases fall within in the law."); *Assessors v. Osbornes*, 76 U.S. (9 Wall.) 567, 575 (1870) (holding that "[j]urisdiction in such cases was conferred by an act of Congress, and when that act of Congress was repealed the power to exercise such jurisdiction was withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely upon the act of Congress") (citations omitted).

Case No. 10 Civ. 4518(BSJ)(GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings.'") (quoting 22 U.S.C. § 8772(b)); *Robertson*, 503 U.S. at 434-35 ("'[T]he Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned *Seattle Audubon Society et al., v. F. Dale Robertson*, Civil No. 89-160 and Washington Contract Loggers Assoc. et al., v. F. Dale Robertson, Civil No. 89-99 (order granting preliminary injunction) and the case Portland Audubon Society et al., v. Manuel Lujan, Jr., Civil No. 87-1160-FR.'" (quoting Dep't of the Interior and Related Agencies Appropriations Act of 1990, 103 Stat. 745, § 318(b)(6)(A)).

Section 2(b) falls well within the broad confines of Congress's power to define and limit the jurisdiction of the lower federal courts, as confirmed by these precedents. Section 2(b) withdraws subject-matter jurisdiction over a specific category of lawsuits (namely, all suits relating to the Bradley property), and specifies that this change in the law shall apply to both pending and future cases. Congress has ample authority to adjust the jurisdiction of the lower federal courts in this manner, pursuant to the bedrock constitutional principle that "jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part." *Kline*, 260 U.S. at 234.

Petitioner nevertheless suggests that section 2(b) exceeds "'the legislative power to make general law'" because "[i]t directed the federal courts to 'promptly dismiss' Petitioner's lawsuit." Pet. Br. 11 (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 224 (1995)). Petitioner is mistaken. As an initial matter, section 2(b) is not addressed solely to petitioner's lawsuit. Rather, it applies generally to *any* pending or future lawsuit relating to the Bradley property, regardless of the identity of the plaintiff or defendant. Pub. L. No. 113-179, 128 Stat. 1913, § 2(b). It is therefore far more "general" than petitioner contends.

More fundamentally, petitioner's argument rests on the mistaken "assumption that legislation must be generally applicable" to pass constitutional muster and that "'there is something wrong with particularized legislative action.'" *Bank Markazi*, 136 S. Ct. at 1327 (quoting *Plaut*, 514 U.S. at 239 n.9). To the contrary, "[t]his Court and lower courts have upheld as a valid exercise of Congress' legislative power diverse laws that governed one or a very small number of specific subjects." *Id.* at 1328

(collecting cases); *see Plaut*, 514 U.S. at 239 n.9 ("Even laws that impose a duty or liability upon a single individual or firm are not on that account invalid."); *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 472 (1977) (noting that legislation may concern "a legitimate class of one"). Indeed, in *Bank Markazi*, the Court recently upheld as constitutional legislation that applied to a single consolidated proceeding. 136 S. Ct. at 1326-27. For the same reasons, section 2(b) falls well within Congress's legislative authority.

II. THE GUN LAKE ACT DOES NOT INTRUDE UPON THE JUDICIAL POWER

The Gun Lake Act does not encroach upon the judicial power. It is well established that Congress does not offend the separation of powers when it changes the applicable procedural or substantive law that courts must apply in matters pending before them, even if the effect of such a change is outcome-determinative in a particular case. The Gun Lake Act is a permissible implementation of that undisputed principle because the Act changed the law in two respects, both by confirming the trust status of the Bradley property (thereby repealing any grounds for challenging that status under prior law) and by removing subject-matter jurisdiction over any lawsuits relating to the property. Petitioner's arguments to the contrary cannot be reconciled with the precedents of this Court or with more than a century of legislative practice.

A. The Gun Lake Act Changes The Law Rather Than Compelling Findings Or Results Under Preexisting Law

"Article III of the Constitution establishes an independent Judiciary * * * with the 'province and duty * * * to

say what the law is' in particular cases and controversies." *Bank Markazi*, 136 S. Ct. at 1322 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). The Court has identified three "types of legislation" that may infringe upon the judicial power. *Plaut*, 514 U.S. at 218. First, the Court stated in *United States v. Klein*, 80 U.S. (13 Wall.) 128, 146 (1871), that Congress may not "prescribe rules of decision to the Judicial Department of the government in cases pending before it," although subsequent decisions have sharply limited the seemingly broad sweep of this dictum. *See, e.g.*, *Bank Markazi*, 136 S. Ct. at 1324 (cautioning that "[o]ne cannot take this language from *Klein* 'at face value,'" because "'congressional power to make valid statutes retroactively applicable to pending cases has often been recognized'") (citation omitted). Second, the Court has held that Congress may not "vest review of the decisions of Article III courts in officials of the Executive Branch." *Plaut*, 514 U.S. at 218 (citing *Hayburn's Case*, 2 U.S. (2 Dall.) 409 (1792)). Finally, Congress may not "retroactively comman[d] the federal courts to reopen final judgments." *Plaut*, 514 U.S. at 219. This case concerns only the first of these principles.

Klein addressed the constitutionality of an appropriations provision enacted by the Reconstruction Congress in response to the Supreme Court's decision in *United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1869), which had held that a presidential pardon for disloyal conduct during the Civil War was sufficient proof of loyalty to entitle pardon recipients to recover property seized from them by the Union forces. *Id.* at 543. The statutory provision at issue purported to preclude the federal courts from considering such a pardon "'as evidence in support of any claim against the United States'" for the recovery

of forfeited property, and instead required the courts to "'take[] and deem[]'" a person's acceptance of such a pardon as "'conclusive evidence'" requiring dismissal of such a claim (or, if judgment had already been entered by the Court of Claims in such person's favor, requiring the Supreme Court to dismiss the case for lack of jurisdiction). *Klein*, 80 U.S. at 133-34 (quoting Act of July 12, 1870, 16 Stat. 230, 235).

The Court struck down this provision as unconstitutional, for two reasons. *First*, the provision did not create any "new circumstances," but instead required courts to "deem" certain evidence insufficient to satisfy a standard established by existing law, thereby forbidding the Judiciary "to give the effect to evidence which, in its own judgment, such evidence should have." *Klein*, 80 U.S. at 134, 146-47. In other words, the provision "prescribe[d] [a] rule of decision" for courts because it directed them "to give [evidence] an effect precisely contrary" to the courts' "own judgment." *Id.* at 146-47. Accordingly, "Congress ha[d] inadvertently passed the limit which separates the legislative from the judicial power." *Id.* at 147.

Second, the Court held that the provision impermissibly "impair[ed] the effects of a pardon, and thus infring[ed] the constitutional power of the Executive." *Klein*, 80 U.S. at 147. The Court explained that "the legislature cannot change the effect of * * * a pardon any more than the executive can change a law." *Id.*

"*Klein* has been called 'a deeply puzzling decision,'" *Bank Markazi*, 136 S. Ct. at 1323 (quoting Daniel J. Meltzer, *Congress, Courts, and Constitutional Remedies*, 86 Geo. L.J. 2537, 2538 (1998)), and as noted its seemingly broad reference to "prescrib[ing] rules of decision" can-

not be taken "'at face value.'" *Id.* at 1325 (quoting Richard H. Fallon et al., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 324 (7th ed. 2015)); *see Plaut*, 514 U.S. at 218 (questioning "the precise scope of *Klein*"); *Miller v. French*, 530 U.S. 327, 349 (2000) (same). Indeed, in the entire history of the Republic, "the only case to strike down a law explicitly on *Klein* grounds was *Klein* itself; every *Klein*-based challenge to federal legislation has, quite appropriately, failed." Howard M. Wasserman, *The Irrepressible Myth of Klein*, 79 U. Cin. L. Rev. 53, 55 (2010).

This Court's subsequent cases make clear that *Klein*'s "rules of decision" dictum stands only for the proposition that "Congress * * * may not usurp a court's power to interpret and apply the law to the circumstances before it." *Bank Markazi*, 136 S. Ct. at 1323 (citation and internal punctuation omitted). Put another way, Congress may not "prescribe or superintend how [the courts] decide * * * cases." *City of Arlington v. F.C.C.* 569 U.S. 290, 297 (2013) (citation omitted); *see Bank Markazi*, 136 S. Ct. at 1324 ("[T]he statute in *Klein* infringed the judicial power * * * because it attempted to direct the result without altering the legal standards * * *."). This is because it is the province of the courts, and not the legislature, to "apply [a] rule to particular cases" and "of necessity expound and interpret that rule." *Marbury*, 5 U.S. at 177. This division of authority prevents Congress from "commandeering the courts to make a political judgment look like a judicial one." *Bank Markazi*, 136 S. Ct. at 1337 (Roberts, C.J., dissenting). But it is emphatically the province of the Legislative Branch to make or amend the law – even when the effect of such alterations is to change the outcome of pending cases. *See, e.g.*, *Bank Markazi*, 136 S. Ct. at 1325 ("[Y]es, we have affirmed,

Congress may indeed direct courts to apply newly enacted, outcome-altering legislation in pending civil cases.").

Consistent with these principles, this Court's post-*Klein* decisions "have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" *Plaut*, 514 U.S. at 218 (citing *Robertson*, 503 U.S. at 441); *Bank Markazi*, 136 S. Ct. at 1317 (same); *Miller*, 530 U.S. at 349 (same). Thus, "a statute does not impinge on judicial power when it directs courts to apply a new legal standard" to pending cases, even when that legal standard "effectively permit[s] only one possible outcome." *Bank Markazi*, 136 S. Ct. at 1325; *see Pope v. United States*, 323 U.S. 1, 11 (1944) ("When a plaintiff brings suit to enforce a legal obligation it is not any the less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff's claim is uncontested or incontestable.").

For example, in *Robertson*, the Court considered a challenge to a provision in the Department of the Interior and Related Agencies Appropriations Act of 1990, Pub. Law No. 101-121, § 318, 103 Stat. 701, 745 (1989), that had the effect of changing the results of pending litigation. Congress adopted the provision in response to two lawsuits claiming that the government's harvesting and sale of timber in certain Pacific Northwest forests violated five preexisting statutory requirements. *Robertson*, 503 U.S. at 431-33. The Act provided that "Congress hereby determines and directs that management of areas according to [the provisions in the Act] is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the [two lawsuits]." *Id.* at 434-35

(quoting 103 Stat. at 747). This Court upheld the provision, on the ground that it "compelled changes in law" rather than "findings or results under old law." *Id.* at 438. "Before [the provision] was enacted," the Court explained, "the original claims would fail only if the challenged harvesting violated none of five old provisions," whereas under the Act, "those same claims would fail if the harvesting violated neither of two new provisions." *Id.*

Likewise, in *Miller*, the Court upheld the the Prison Litigation Reform Act of 1995 ("PLRA"), Pub. Law No. 104-134, §§ 801-810, 110 Stat. 1321, 1366-77 (1996), which imposed new requirements for continuing prospective relief in civil actions challenging prison conditions. In particular, the statute's provisions had the effect of changing the results of pending litigation by mandating an automatic stay of certain previously-issued injunctions. The Court squarely rejected the prisoners' argument that Congress had impermissibly "prescribed a rule of decision because, for the period of time until the district court makes a final decision on the merits of the motion to terminate prospective relief, [the PLRA] mandates a particular outcome: the termination of prospective relief." *Miller*, 530 U.S. at 349. The Court instead explained that "[r]ather than prescribing a rule of decision, [the PLRA] simply imposes the consequences of the court's application of the new legal standard." *Id.*

Finally, in *Bank Markazi*, the Court upheld a provision of the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. § 8772, that "designate[d] a particular set of assets and render[ed] them available to satisfy the liability and damages judgments underlying a consolidated enforcement proceeding that the statute identifie[d] by the District Court's docket number." 136

S. Ct. at 1317. The Court explained that the provision "provide[d] a new standard clarifying that, if Iran owns certain assets, the victims of Iran-sponsored terrorist attacks will be permitted to execute against those assets," and that "[a]pplying laws implementing Congress' policy judgments, with fidelity to those judgments, is commonplace for the Judiciary." *Id.* at 1326.

The Gun Lake Act similarly compels a change in the law, rather than purporting to direct courts to make particular findings or reach particular conclusions under old law. Petitioner contends that the Act does not "amend[] underlying substantive or procedural laws," Pet. Br. 12; *see also id.* at 11, 16, 18, but that is patently incorrect. Section 2(b) explicitly changes the law by providing that, "*[n]otwithstanding any other provision of law*, an action * * * relating to [the Bradley property] shall not be filed or maintained in a Federal court and shall be promptly dismissed." Pub. L. No. 113-179, 128 Stat. 1913 § 2(b) (emphasis added). That provision necessarily modified the federal statutes that had previously conferred federal-court jurisdiction over such lawsuits, *see, e.g.*, 5 U.S.C. § 702; 28 U.S.C. §1331, thereby changing the law.[7]

Klein itself recognized that if the appropriations provision at issue there had "simply denied the right of appeal in a particular class of cases, there could be no doubt

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[7] Petitioner points to a House Report stating that the Act "would make no 'changes in existing law.'" Pet. Br. 20 (quoting H. Rep. No. 113-590, at 5 (2014)). Petitioner misconstrues the import of that language. The House Rules provide that "whenever a committee reports a bill * * * propos[es] to repeal or amend a statute or part thereof," the report must expressly delineate "the omissions and insertions proposed" to the statute being repealed or amended. Rule

that it must be regarded as an exercise of the power of Congress to make 'such exceptions from the appellate jurisdiction' as should seem to it expedient." 80 U.S. at 145; *see also id.* ("Undoubtedly the legislature * * * may confer or withhold the right of appeal from [the Court of Claims'] decisions. And if this act did nothing more, it would be our duty to give it effect."). Legislation defining the subject-matter jurisdiction of the federal courts simply exercises Congress's authority "to tell the courts what classes they may decide," and in no manner "prescribe[s] or superintend[s] how they decide those cases[.]" *City of Arlington*, 569 U.S. at 297 (citations omitted).

Moreover, section 2(b) "must be read not in isolation, but in the context of [the Gun Lake Act] as a whole." *Miller*, 530 U.S. at 349. Section 2(b) implements and "operates in conjunction" with section 2(a), which changed the law by repealing any preexisting legal grounds for challenging the Secretary's decision to take the Bradley property into trust. *Id.* at 349. The combined effect of these provisions is to place the Secretary's decision to take the Bradley property into trust beyond dispute, whereas before the enactment of these provisions the law did not foreclose such a challenge (and arguably supported it). Because the Gun Lake Act changes the law rather than

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XIII.3(e)(1) of the U.S. House of Representatives (115th Cong.). "In order to fall within the purview of th[at] rule the bill must seek to repeal or amend *specifically* an existing law[.]" Jefferson's Manual § 846, at 651 (115th Cong.) (emphasis added). The House Report language relied on by petitioner merely explains that the Gun Lake Act does not specifically repeal or amend the text of an existing statute, and therefore need not comply with the requirements of Rule XIII.3(e).

compelling findings or results under old law, it does not impinge upon the judicial power.

B. The Gun Lake Act's Direction That Courts "Shall Promptly Dismiss" Any Action Relating To The Bradley Property Is Commonplace And Constitutionally Valid

Petitioner contends that "this Court has not previously confronted an intrusion on the judicial power quite like that effected by Section 2(b)," in that section 2(b)'s requirement that any case relating to the Bradley property "shall be promptly dismissed" is purportedly unprecedented. Pet. Br. 16; *see also id.* at 11, 12, 17, 18. Petitioner's claim depends on two demonstrably incorrect assumptions: that section 2(b)'s direction is uncommon, and that it is inappropriate for Congress to direct courts to dismiss a specified class of lawsuits.

As an initial matter, petitioner errs in contending that section 2(b) is "unusual."[8] Pet. Br. 18. For over a century, Congress has frequently enacted legislation mandating that the federal courts "shall dismiss" lawsuits in a wide variety of circumstances. *See, e.g.*, *Inhabitants of Twp. of Bernards v. Stebbins*, 109 U.S. 341, 354 (1883) (discussing statute providing that "'if * * * such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, * * *' that court 'shall proceed no further therein, but *shall dismiss* the suit'") (quoting 18 Stat. 470, 472 (1875)) (emphasis added); *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327, 339 (1895) (same); *George*

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[8] Even if the provision were unusual, which it is not, that would not cast doubt on its constitutionality. This Court described the statute at issue in *Bank Markazi* as "unusual," but nevertheless upheld it. 136 S. Ct. at 1317.

M. West Co. v. Lea, 174 U.S. 590, 596 (1899) (discussing statute providing that "'if solvency at such date is provided by the alleged bankrupt the proceedings *shall be dismissed*'") (quoting 30 Stat. 541, 547 (1898)) (emphasis added); *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1998) (discussing statute providing that certain claims presented in second or successive habeas petitions "'*shall be dismissed*'") (quoting 28 U.S.C. § 2244(b)) (emphasis added); *Nat'l Coal. to Save Our Mall v. Norton*, 269 F.3d 1092, 1095 (D.C. Cir. 2001) (discussing legislation providing that "'[t]he decision to locate the memorial at the Rainbow Pool site * * * *shall not be subject to judicial review*'" (quoting Pub. L. No. 107-11, § 3, 115 Stat. 19 (2001)) (emphasis added). Indeed, the U.S. Code is replete with such provisions.[9]

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[9] *See, e.g.*, 6 U.S.C. § 1505(a) ("No cause of action shall lie or be maintained in any court against any private entity, and such action *shall be promptly dismissed*, for the monitoring of an information system and information under section 1503(a) of this title that is conducted in accordance with this subchapter.") (emphasis added); 6 U.S.C. § 1505(b) ("No cause of action shall lie or be maintained in any court against any private entity, and such action *shall be promptly dismissed*, for the sharing or receipt of a cyber threat indicator or defensive measure under section 1503(c) of this title if [certain conditions are met].") (emphasis added); 8 U.S.C. § 1252(b)(7)(C) ("If the district court rules that the removal order [in a criminal proceeding] is invalid, the court *shall dismiss* the indictment.") (emphasis added); 10 U.S.C. § 391(d) ("No cause of action shall lie or be maintained in any court against any operationally critical contractor, and such action *shall be promptly dismissed*, for compliance with this section that is conducted in accordance with procedures established pursuant to subsection (b).") (emphasis added); 10 U.S.C. § 393(d) ("No cause of action shall lie or be maintained in any court against any cleared defense contractor, and such action *shall be promptly dismissed*, for compliance with this section that is conducted in accordance with the procedures established pursuant to subsection

Nor is there anything inappropriate about Congress directing courts to dismiss certain classes of lawsuits based on the courts' determination that a particular case falls within a specified class. It is well established that Congress in no manner "encroach[es] upon the judicial function" simply by "directing that [a court] pass upon petitioner's claims in conformity to [a] particular rule of liability * * * and to give judgment accordingly." *Pope v. United States*, 323 U.S. at 10 (collecting cases). Indeed, in *Robertson*, the Court rejected arguments based on "the imperative tone of the provision" at issue, explaining

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(a).") (emphasis added); 11 U.S.C. § 742 ("If [the Securities Investor Protection Corporation] completes the liquidation of the debtor, then the court *shall dismiss* the case.") (emphasis added); 11 U.S.C. § 1307(b) ("On the request of the debtor at any time, [if certain conditions have not been met], the court *shall dismiss* a case under this chapter.") (emphasis added); 11 U.S.C. § 1208 (requiring the same for bankruptcy proceedings under Chapter 12) (emphasis added); 22 U.S.C. § 254d ("Any action or proceeding brought against an individual who is entitled to immunity [under certain statutory provisions and treaties] * * * *shall be dismissed.*"); 28 U.S.C. § 1406(a) ("The district court of a district in which is filed a case laying venue in the wrong division or district *shall dismiss*, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.") (emphasis added); 31 U.S.C. § 3730(e)(4)(A) ("The court *shall dismiss* an action or claim under [the False Claims Act], unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed.")(emphasis added); 42 U.S.C. § 300aa-11(a)(2)(B) ("If a civil action which is barred under subparagraph (A) [of the statute authorizing the National Vaccine Injury Compensation Program] is filed in a State or Federal court, the court *shall dismiss* the action.") (emphasis added); 50 U.S.C. § 1885a(a) ("[A] civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and *shall be promptly dismissed*, if the Attorney General [provides certain certifications to the district court.]") (emphasis added).

that the use of such language in no manner undermined its conclusion that the provision compelled "a change in law, not specific results under old law." 503 U.S. at 439. Likewise, as demonstrated by the bevy of similar statutes, *see* p. 22-23, n. 9, *supra*, section 2(b)'s direction to dismiss lawsuits relating to the Bradley property is a straightforward exercise of Congress's broad legislative authority to define the jurisdiction of the federal courts.

Petitioner is simply wrong in contending that the Gun Lake Act "resembles" a statute directing "that 'Smith wins' his pending case," because it directs courts to "promptly dismiss" cases over which they lack subject-matter jurisdiction. Pet. Br. 17 (citation omitted). Far from directing the courts to declare one litigant the winner, the Act instead imposes an objective standard for the courts to interpret and apply in determining whether they have subject-matter jurisdiction over a given case. In determining whether a particular lawsuit is one "relating to" the Bradley property, the courts are engaging in a quintessentially judicial task, one that they are free to perform in the independent exercise of their unfettered judgment. Indeed, the judicial task of interpreting and applying the Gun Lake Act is no different in substance from the judicial task performed in construing countless other federal statutes. *See, e.g., Egelhoff v. Egelhoff ex. rel. Breiner*, 532 U.S. 141, 146-52 (2001) (construing 29 U.S.C. § 1144(a) to compel dismissal of plaintiff's claims as preempted because they were based on state laws that "relate to" employee benefit plans). Eliminating the federal courts' subject-matter jurisdiction over a particular category of cases delineated by an objective standard interpreted and applied by the courts does not dictate any particular merits outcome under preexisting law, nor does it "commandeer[] the courts to make a political

judgment look like a judicial one." *Bank Markazi*, 136 S. Ct. at 1337 (Roberts, C.J., dissenting). It is well within Congress's power.

Petitioner's challenge to the "promptly dismiss" requirement also fails because that requirement merely implements and confirms section 2(b)'s plainly constitutional change in jurisdictional law. In *Miller*, state prisoners had challenged the PLRA on the ground that its automatic stay of the effectiveness of certain preexisting injunctions effectively dictated the result in those cases without itself making any change in the law. This Court squarely rejected that argument, explaining that, while the automatic-stay provision did not itself amend the underlying legal standard for imposition of injunctions, it "must be read * * * in the context of," and "operates in conjunction with," another provision of the Act that did change the standard: "Rather than prescribing a rule of decision, [the automatic-stay provision] simply imposes the consequences of the court's application of the new legal standard." 530 U.S. at 349.

Section 2(b)'s requirement that courts "shall promptly dismiss" once they determine that a case falls within the Act's jurisdictional carve-out is no more an intrusion on the judicial power than was the automatic-stay provision upheld in *Miller*. At most, it "simply imposes the consequences of the court's application of the new legal standard" for subject-matter jurisdiction. *Miller*, 530 U.S. at 349. If anything, the section 2(b) requirement is even less constitutionally suspect than was the automatic-stay provision: Section 2(b)'s effect on pending cases would be essentially the same even if Congress had not included the explicit "shall promptly dismiss" requirement, because the only option open to the federal courts in cases that they deem "relat[ed] to" the Bradley

property would be dismissal in any event. *See, e.g, Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety."). In short, because Congress possesses the power to eliminate subject-matter jurisdiction over this class of cases, it necessarily follows that there is no constitutional infirmity in the requirement that the federal courts "shall promptly dismiss" such cases.

CONCLUSION

"The judicial power of the United States conferred by Article III of the Constitution is upheld just as surely by withholding judicial relief where Congress has permissibly foreclosed it, as it is by granting such relief where authorized by the Constitution or by statute." *Dalton v. Specter*, 511 U.S. 462, 477 (1994). The Court should not accept petitioner's invitation to distort the judicial power in a manner that improperly intrudes upon the long-established legislative authority of Congress. The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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